



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1998

Mr. Scott A. Durfee
General Counsel
Office of the Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-1619

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116587.

The Harris County District Attorney's Office (the "district attorney") received a request for a complete copy of its file for *State of Texas v. Christopher Bellows*, Cause Nos. 709426, 709427, 710016, 710017, and 710018. You claim that, with the exception of court-filed documents, information relating to Cause Nos. 709426, 709427, 710017, and 710018 is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You raise no exception to disclosure for the documents relating to Cause No. 710016. Therefore, we presume that the documents relating to that file have been released.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

You state that Christopher Bellows' co-defendant, Ruben Echeverry, is currently pending trial on indictments arising from the incident for which Bellows was investigated and prosecuted in Cause Nos. 709427, 71007, and 710018. Based upon this representation, we conclude that the release of information related to these cause numbers would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the district attorney may withhold the information relating to Cause Nos. 709427, 71007, and 710018 under section 552.108(a)(1).¹

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a). You state that Cause No. 709426 relates to a case that is currently under appeal. After reviewing your arguments, we find that litigation is pending. We also conclude that the documents you have submitted relate to the litigation, and may be withheld.²

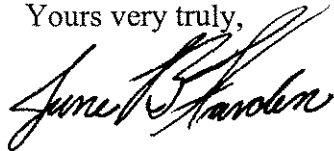
¹We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

²We note that basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 597 (1991).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).³

Because we are able to make a determination under sections 552.103 and 552.108, we do not address your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 116587

Enclosures: Submitted documents

cc: Mr. William A. Sherwood
McFall, Sherwood & Sheehy
909 Fannin Street, Suite 2500
Houston, Texas 77010-1003
(w/o enclosures)

³We note that some of the requested information may be confidential by law. Therefore, if the district attorney receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the district attorney should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).